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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1945

No. 750

PEOPLE OF THE STATE OF ILLINOIS, ex rel.
ROBERT L. GORDON, Director of Labor,
Petitioner,

vs.

NIGEL D. CAMPBELL, Collector of Internal Revenue,
Respondent.

BRIEF FOR PETITIONER.

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INDEX.

	PAGE
Opinion below	1
Jurisdiction	2
Concise Statement of Case	3-8
Specification of Errors	8
Summary of Argument	9-11
Argument:	
I. In View of the Intent of Congress as Manifested in the Social Security Act and Related Legislation, Section 3466 of the Revised Statutes Is Not Applicable to Give a Claim of the United States for Social Security Excise Taxes a Priority over the Claim of a State for Unemployment Compensation Contributions When Such Contributions Are Exacted Under a State Statute Adopted in Accordance with the Congressional Policy Evinced by the Federal Act	12-28
II. The Debtor was not Insolvent within the Meaning of Section 3466 of the Revised Statutes	28-33
III. The State's Lien was so Specific and so Far Perfected as Effectively to Exclude the Funds in Question from the Estate of the Debtor, and Thereby to Defeat the Federal Government's Right of Access to Such Funds under Section 3466	34-43
IV. The Claim of the State of Illinois for Unemployment Compensation Contributions Was a Secured Claim and Consequently Was Entitled to Priority Over the Unsecured Claim of the United States for Social Security Excise Taxes	43-45
Conclusion	46
Appendix (Pertinent Statutes)	47-62

CASES CITED.

Beaston v. Farmers Bank, 12 Pet. 102 ..... 10, 29
Bixler v. Summerfield, 195 Ill. 147 ..... 11, 44
Citizens Banking Co. v. Ravenna National Bank, 234 U. S. 360 ..... 10, 31
Conard v. Atlantic Insurance Company, 1 Pet. 386... ..... 10, 11, 29, 31, 35
Cook County National Bank v. United States, 107 U. S. 445 ..... 9, 13
Duparquet & Company v. Evans, 297 U. S. 216 ..... 10, 31
Elfast v. Lamb, 111 F. (2d) 434 ..... 10, 31, 33
Fisher, In Re, 219 F. 638 ..... 10, 31
Helvering v. Davis, 301 U. S. 619 ..... 9, 17, 24
Hooven v. Burdette, 153 Ill. 672, 679 ..... 11, 45
Kennebec Box Company, Inc. v. O. S. Richards Corp., 299 F. 871 ..... 10, 29
McGraw, In Re, 254 F. 442 ..... 10, 31
Mellon v. Michigan Trust Company, 271 U. S. 236... ..... 9, 11, 13, 43
New York v. Maclay, 288 U. S. 290 ..... 9, 11, 35
Nolte v. Hudson Navigation Company, 8 F. (2d) 859 . 10, 29
People v. Chicago Gas Trust Company, 130 Ill. 268 .. 11, 44
Price v. United States, 269 U. S. 492, 499 ..... 9, 11, 43
Rivard et al. v. Bijou Furniture Company, 67 R. I. 251, 21 Atl. (2d) 563, 68 R. I. 358, 27 Atl. (2d) 853 .... 2, 3, 7, 9, 11, 19, 25, 45
Ross and O'Brien Iron Works, Inc., In Re, 58 F. (2d) 961 ..... 10, 31
Spokane County v. United States, 279 U. S. 80 .... 9, 11, 35
Standard Accident Insurance Co. v. Sheftall & Co., 53 F. (2d) 40 ..... 10, 31
Steward Machine Company v. Davis, 301 U. S. 548... ..... 9, 14, 16, 19, 24
Stitzer Hotel Company v. Beyer, 55 F. (2d) 620 ..... 10, 31
Thelusson v. Smith, 15 U. S. (2 Wheat.) 396 .. 11, 34, 35, 36
United States v. Butler, 297 U. S. 1 16

United States v. Fisher, 2 Cranch. 358 ..... 10, 29
United States v. Guaranty Trust Co. of New York, 280 U. S. 478 ..... 9, 13
United States v. Knott, 298 U. S. 544 ..... 11, 36
United States v. Marxen, 307 U. S. 200 ..... 9, 12
United States v. Oklahoma, 261 U. S. 253 ..... 10, 11, 29, 32, 43
United States v. Texas, 314 U. S. 480 ..... 9, 11, 36, 37, 45
United States v. Waddill, 323 U. S. 353 ..... 8, 11, 37-39, 41, 42, 43

CASES DISTINGUISHED.

Matter of White Plains Oil Corp., 287 N. Y. 141 ... 9, 13, 28
New York v. Maclay, 288 U. S. 290 ..... 9, 13
Price v. United States, 269 U. S. 492 ..... 9, 13
Spokane County v. United States, 279 U. S. 80 ..... 9, 13
Stripe v. United States, 269 U. S. 503 ..... 9, 13
United States v. Emory, 314 U. S. 423 27
United States v. New York, 315 U. S. 510 ..... 9, 14, 26
United States v. Texas, 314 U. S. 480 ..... 9, 28
United States v. Waddill Co., 323 U. S. 353 ..... 9, 13

STATUTES CITED.

Act of August 24, 1937, Chap. 755, 50 Stat. 754 22
Bankruptcy Act, Sec. 64(a), 11 U. S. C. A. § 104 ..... 14, 29, 30, 32
Ill. Rev. Stat. 1943, Chap. 32, Section 157.5(d) 44
Ill. Rev. Stat. 1943, Chap. 48, Section 243 ..... 4, 5, 39, 40, 58-62
Ill. Rev. Stat. 1943, Chap. 77, Section 9 ..... 30, 43, 44
Judicial Code, Section 237, 28 U. S. C. A. 344(b) 2
Revenue Act of 1939, Section 1601 22
Revenue Act of 1941, Section 701 22
Revenue Act of 1943, Section 602 ..... 7, 20
Second Deficiency Appropriation Act, 1938, Chap. 681, 52 Stat. 1148 22
Second Revenue Act of 1940, Section 701 22
Social Security Act, Chap. 531, 49 Stat. 620 ..... 5, 6, 14, 15, 17, 18, 20, 21, 22, 23, 24, 47-58

United States Code, Title II, Chap. 1, 11 U. S. C. A. 1.. 32
United States Code, Title II, Chap. 3, Section 21, 11 U. S. C. A. 21 ..... 29, 30
United States Revised Statutes, Section 3466, 31 U. S. C. A. 191 ..... 2, 3, 6, 7, 8, 12, 13, 14, 25, 28, 33, 43, 45, 47
War Mobilization and Reconversion Act. 50 U. S. C. A. App. 1667 23

MISCELLANEOUS.

Cong. Rec. Vol. 78, Pt. 10, P. 10770 17
Cong. Rec., Vol. 79, Pt. 1, 546 20
Douglas, Paul—Social Security in the United States (1936), pp. 146-148 20
Hearings before the Senate Committee on Finance on S. 1130, 74th Congress, 1st Session, P. 112 20
Hearings before the Special Committee on Post-war Economic Policy and Planning, House of Representatives, 78th Congress, 2nd Session, Pt. 2 and 3, Economic Problems of the Transition Period 23
Hearings before the Special Committee on Post-war Economic Policy and Planning, United States Senate, 78th Congress, 2 Session, Pt. 3, Unemployment Compensation 23
House Report No. 615, 74th Congress, 1st Session. 17, 19, 24
House Report No. 1855, 78th Congress, 2nd Session, P. 27 23
House Report No. 1855, 78th Congress, 2nd Session, PP. 27-28 20
Report of the President's Committee on Economic Security, P. 19 20
Senate Document No. 106, 78th Congress, 1st Session, P. 79 23
Senate Report No. 628, 74th Congress, 1st Session. 17, 19, 24
Senate Report No. 539, Pt. 5, 78th Congress, 2nd Session, P. 6 23
Senate Report No. 565, 79th Congress, 1st Session, P. 2 23
The Social Security Board, Eighth American Scientific Congress, May 10-18, 1940 21

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ROBERT L. GORDON, Director of Labor,
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Respondent.

BRIEF FOR PETITIONER.

The Opinion of the Court Below.

The order of the Circuit Court of Cook County, Illinois, was entered without an opinion (R. 22). The final opinion of the Supreme Court of Illinois (R. 42-55) in this case is reported in 391 Ill. 29, 62 N. E. (2d) 537, under the name *"The People, for the use of Francis B. Murphy, Director of Labor, Appellee,* v. *Chicago Waste & Textile Company, et al, Carter H. Harrison, Collector of Internal Revenue, Appellant"*, as No. 28474.

Jurisdiction of This Court.

The jurisdiction of this Court is based upon the provisions of Section 237 of the Judicial Code, as amended by the Act of February 13, 1925, 43 Stat. 937, U. S. Code, Title 28, Section 344, paragraph (b), authorizing writs of *certiorari* to be issued to the highest courts of the various states where any title, right, privilege or immunity is specially set up or claimed by either party under any statute of, or authority exercised under, the United States.

In his original claim (R. 14), amended claim (R. 16) and intervening petition (R. 18), the Collector of Internal Revenue, acting under the authority of the United States, specially based his claim for a priority in the distribution of the assets of the debtor upon the provisions of Section 3466 of the Revised Statutes of the United States. The applicability of this Federal statute was raised and contested throughout every state of these proceedings (R. 20, 23, 30, 31, 44, 48). The Circuit Court of Cook County, Illinois, in effect decided against the contentions of the Collector (R. 22). The Supreme Court of Illinois, which is the highest court in Illinois, passed upon the applicability of said Section 3466 and specifically granted priority to the Collector thereunder (R. 42, 53).

In seeking a review by this Court two reasons for granting the writ were urged; **First**—That the Court below decided a Federal question of substance not heretofore precisely determined by this Court and in so doing expressly recognized (R. 51) that its decision was in direct conflict with the decision of the highest court of a sister state (*Rivard* v. *Bijou Furniture Co.*, 68 R. I. 358); and **Second**—That the court below decided Federal questions of substance in a way probably not in accord with applicable decisions of this Court. These reasons are fully set

forth in the Petition for *Certiorari* (pp. 8-11), are discussed fully in the body of the brief and argument herein and will therefore not be discussed further at this point.

The final judgment of the Supreme Court of Illinois was rendered on September 17, 1945, (R. 42). The petition for *certiorari* was filed on January 15, 1946, time for such filing having been extended by order of this Court to and including January 16, 1946 (R. 57). On February 25, 1946, *certiorari* was granted by this Court (R. 58).

A companion case, *People of the State of Illinois, ex rel. Robert L. Gordon, Director of Labor, Petitioner,* v. *The United States of America, Respondent,* No. 749 of the current term, involving similar but not identical issues, is also before this Court, *certiorari* having been granted concurrently with the award in the instant case.

Concise Statement of The Case.

This case and the above entitled companion case present two important questions, decided in favor of the United States Government by the Supreme Court of Illinois. The first of these issues was decided adversely to the United States Government by the Supreme Court of Rhode Island in the case of *Rivard* v. *Bijou Furniture Company,* 67 R. I. 251, 21 Atl. (2d) 563; 68 R. I. 358, 27 Atl. (2d) 853, in an opinion which the Supreme Court of Illinois expressly recognized as in point but declined to follow. These questions may be stated as follows:

> In view of the intent of Congress as manifested in the Social Security Act and related legislation, does section 3466 of the Revised Statutes of the United States (Appendix, *infra,*) apply to give a claim of the United States for Social Security excise taxes a priority over the claim of a state for Unemployment Compensation contributions when such employment com-

pensation contributions are exacted under a state statute adopted in accordance with the Congressional policy evinced by the Federal Act?

Was the claim of the State of Illinois for Unemployment Compensation contributions a secured claim and consequently entitled to priority over the unsecured claim of the United States for Social Security Excise taxes?

The instant case also presents two additional questions, not involved in the companion case, which are as follows:

Was the debtor insolvent within the meaning of section 3466 of the Revised Statutes of the United States?

Was the state's lien for unemployment compensation contributions so far specific and perfected as effectively to exclude the funds in question from the estate of the debtor and thereby to defeat the Federal Government's right of access to such funds?

These questions emerge from facts which are not in dispute and are briefly stated as follows:

On June 29, 1942, the Director of Labor of the State of Illinois filed a complaint in the Circuit Court of Cook County, Illinois, to foreclose his statutory lien for unemployment compensation contributions (R. 1). The allegations of the complaint, which are undisputed, may be summarized as follows:

Chicago Waste and Textile Company, a corporation, hereinafter called the debtor, was an employer, subject to the Illinois Unemployment Compensation Act (R. 2). It became indebted to the Director of Labor in the sum of $734.89, plus interest and penalties, for contributions due under the Act (R. 2-3). It admitted its indebtedness to the Director, and its liability for the said contributions

and the amount thereof were based upon reports it had filed with the Director of Labor (R. 3-4).

Section 26 (a) of the Illinois Unemployment Compensation Act created a lien in favor of the Director for a sum equal to the amount of contributions, interest and penalties due from the said debtor. Such lien attached to the personal property or rights used by the debtor in connection with its business (R. 4-5). Notice of the said lien was filed by the Director prior to May 21, 1942, in the office of the Recorder of Deeds of Cook County, Illinois (R. 5, 9-12).*

Associated Agencies, Inc. obtained a judgment against the debtor in the Municipal Court of Chicago, and execution upon such judgment was issued on June 3, 1942 (R. 6-7). Said Associated Agencies, Inc. requested the bailiff of the Municipal Court to levy upon and sell at public auction the personal property of the debtor which was subject to the Director's lien (R. 7). The bailiff served notice that he would hold such sale on June 29, 1942 (R. 7). The complaint of the Director of Labor also stated "That plaintiff is informed and believes and therefore states upon information and belief" that said debtor "is insolvent and that the personal property subject to the lien herein being foreclosed is scant security for the debt due the Director" and prayed for an injunction to restrain the bailiff from selling the personal property of the debtor and for the appointment of a receiver (R. 7-9). The writ of injunction was granted and a receiver was appointed (R. 13).

On October 9, 1942 and October 28, 1942, Carter H. Harrison, Collector of Internal Revenue for the First District of Illinois, on behalf of the United States, filed claims for Federal unemployment taxes (more commonly known as taxes under Title IX of the Social Security Act) in the

* The provisions of the Illinois Unemployment Compensation Act relating to the lien of the Director are set forth in the Appendix, *infra*, pp. 58-62.

sum of $1,431.16, plus interest, and Federal insurance contributions (more commonly known as taxes under Title VIII of the Social Security Act) in the sum of $522.91, plus interest (R. 14-18). Subsequently, on November 16, 1942 (R. 43), the United States filed an intervening petition in which it alleged "That the defendant herein is insolvent and unable to pay and discharge in full all of its indebtedness," and that the United States is entitled to priority of payment under the provisions of Section 3466 of the United States Revised Statutes (R. 18-19). In his answer to the intervening petition, the Director admitted that the debtor "is insolvent and unable to pay and discharge in full all of its indebtedness", denied that the United States was entitled to priority under Section 3466 and claimed priority under his lien (R. 19-21). The Circuit Court of Cook County subsequently approved the final report of the receiver and ordered him to deposit the balance of $677.81, remaining in his hands, with the Clerk of the Circuit Court, subject to the further order of the Court (R. 21-22). The Circuit Court later ordered that the lien of the Director be given prior to the extent of 90 per cent of the funds on deposit with the Clerk of the Circuit Court, and that the United States have priority as to the 10 per cent remaining (R. 22).

In the Supreme Court of Illinois, because of the similarity of certain issues, the case at bar was consolidated for opinion with the companion case of *The People, For the Use of Francis B. Murphy, Director of Labor, Appellee,* v. *Advertising Review Publishing Company, et al.,— (United States of America, Appellant)*—No. 28490 (R. 25, 42) now before this Court under the style *People of the State of Illinois, ex rel. Robert L. Gordon, Director of Labor, Petitioner,* v. *The United States of America, Respondent,* No. 749 of the current term. Since the facts in the two cases are dissimilar and the case at bar has additional

issues, separate petitions were submitted to this Court and separate briefs are being filed.

In its original opinion filed May 23, 1945, the Supreme Court of Illinois held that it was unnecessary in the case at bar to decide the various questions raised by the United States and the Director of Labor with respect to Section 3466 of the United States Revised Statutes; that on the basis of the credit provisions of Section 602 (b) of the Revenue Act of 1943 (26 U. S. C. 602 (b)), the Director was entitled to the entire funds on deposit with the Clerk of the Circuit Court of Cook County, Illinois (R. 26-28), and that the amount so paid the Director should be credited on the claim of the Collector against the debtor. The United States filed a petition for rehearing (R. 39-41). On September 17, 1945, the Supreme Court of Illinois denied the petition for rehearing (R. 41) but modified its previous opinion and held that under Section 3466 the United States was entitled to priority on that portion of its claim which was for Federal insurance contributions, plus interest, and any balance remaining was to be paid to the Director and credited against the claim of the United States for Federal unemployment taxes (R. 42-55).

In reaching this result, the Supreme Court of Illinois held that the Collector's claim for Federal insurance contribution taxes was, under Section 3466 of the Revised Statutes, entitled to priority over the claim of the State of Illinois for unemployment contributions, but expressly conceded that its holding on that issue was in direct conflict with the holding of the Supreme Court of Rhode Island in *Rivard* v. *Bijou Furniture Co.*, 67 R. I. 251, 21 Atl. (2d) 563 (R. 51). The Supreme Court of Illinois also held that the petitioner's lien was not so specific and perfected as to bar the priority of the United States under Section 3466. In so doing, however, its conclusion was predicated en-

tirely upon the very dissimilar facts in the companion case of *The People, for the use of Francis B. Murphy, Director of Labor, Appellee,* v. *Advertising Review Publishing Company, et al.,* case No. 28490, which had been consolidated for opinion with the instant case (second paragraph, R. 52), and not upon the facts in the case at bar. It also based its said holding upon this Court's pronouncements in *United States* v. *Waddill, Holland and Flinn,* 323 U. S. 353, which, as we shall demonstrate under Point III, does not apply to such a situation but only relates to the facts similar to those presented in the said companion case. The Supreme Court of Illinois also impliedly denied petitioner's contention that the debtor was not insolvent within the meaning of Section 3466 of the Revised Statutes.

Specification of Assigned Errors Intended to Be Urged.

The Supreme Court of Illinois erred:

1. In holding that the claim of the United States for Federal insurance contributions was entitled to priority under Section 3466 of the United States Revised Statutes over the claim of the petitioner for unemployment compensation contributions.

2. In holding that Section 3466 was applicable to defeat petitioner's claim for unemployment compensation contributions.

3. In holding that the debtor was insolvent within the meaning of Section 3466.

4. In holding that petitioner's lien was not specific and perfected so as to bar the priority of the United States under Section 3466.

5. In failing to hold that petitioner's secured claim was entitled to priority over the unsecured claim of the United States.

SUMMARY OF ARGUMENT.

I.

In View of the Intent of Congress as Manifested in the Social Security Act and Related Legislation, Section 3466 of the Revised Statutes Is Not Applicable to Give a Claim of the United States for Social Security Excise Taxes a Priority Over the Claim of a State for Unemployment Compensation Contributions When Such Contributions Are Exacted Under a State Statute Adopted in Accordance with the Congressional Policy Evinced by the Federal Act.

United States v. *Marxen*, 307 U. S. 200, 206.
United States v. *Guaranty Trust Company of New York*, 280 U. S. 478, 485.
Mellon v. *Michigan Trust Company*, 271 U. S. 236, 240.
Cook County National Bank v. *United States*, 107 U. S. 445.
United States v. *Texas*, 314 U. S. 480.
Price v. *United States*, 269 U. S. 492.
Stripe v. *United States*, 269 U. S. 503.
Spokane County v. *United States*, 279 U. S. 80.
New York v. *Maclay*, 288 U. S. 290.
United States v. *Waddill Co.*, 323 U. S. 353.
Matter of White Plains Oil Corp., 287 N. Y. 141.
United States v. *New York*, 315 U. S. 510.
Steward Machine Company v. *Davis*, 301 U. S. 548, 586-589, 591.
Helvering v. *Davis*, 301 U. S. 619, 641.
Rivard v. *Bijou Furniture Company*, 67 R. I. 251, 21 Atl. (2d) 563, 68 R. I. 385, 27 Atl. (2d) 853.

II.

The Debtor Was Not Insolvent Within the Meaning of Section 3466 of the Revised Statutes.

United States v. *Oklahoma*, 261 U. S. 253, 260-263.

Conard v. *Atlantic Insurance Company*, 26 U. S. (1 Peters) 389, 439.

United States v. *Fisher*, 2 Cranch 358, 390.

Beaston v. *Farmers Bank*, 12 Peters 102, 133-134, 138.

Kennebec Box Company, Inc. v. *O. S. Richards Corp.*, 299 F. 871, 873.

Nolte v. *Hudson Navigation Company*, 8 F. (2d) 859, 865-866.

Citizens Banking Company v. *Ravenna National Bank*, 234 U. S. 360, 364.

Stitzer Hotel Company v. *Beyer*, 55 F. (2d) 620, 621.

In Re Ross and O'Brien Iron Works, Inc., 58 F. (2d) 961, 962.

In Re Fisher, 619 F. 638, 639.

In Re McGraw, 254 F. 442, 446.

Elfast v. *Lamb*, 111 F. (2d) 434, 436.

Duparquet Company v. *Evans*, 297 U. S. 216, 224.

Standard Accident Insurance Company v. *Sheftall & Company*, 53 F. (2d) 40, 41.

III.

The State's Lien Was So Specific and So Far Perfected as Effectively to Exclude the Funds in Question from the Estate of the Debtor, and Thereby to Defeat the Federal Government's Right of Access to Such Funds Under Section 3466.

Thelusson v. *Smith*, 15 U. S. (2 Wheat.) 396, 425.
Conard v. *Atlantic Insurance Co.*, 26 U. S. (1 Peters) 386, 441, 443.
Spokane County v. *United States*, 279 U. S. 80, 94, 95.
New York v. *Maclay*, 288 U. S. 290, 293, 294.
United States v. *Knott*, 298 U. S. 544, 549-551.
United States v. *Texas*, 314 U. S. 480, 484, 486-488.
United States v. *Waddill Co.*, 323 U. S. 353, 355, 356, 357-60.

IV.

The Claim of the State of Illinois for Unemployment Compensation Contributions Was a Secured Claim and Consequently Was Entitled to Priority Over the Unsecured Claim of the United States for Social Security Excise Taxes.

Price v. *United States*, 269 U. S. 492, 499.
Mellon v. *Michigan Trust Co.*, 271 U. S. 236, 239.
United States v. *Oklahoma*, 261 U. S. 253, 259.
Bixler v. *Summerfield*, 195 Ill. 147, 153.
People v. *Chicago Gas Trust Company*, 130 Ill. 268, 287.
Hooven v. *Burdette*, 153 Ill. 672, 679.
Rivard v. *Bijou Furniture Company*, 67 R. I. 251, 21 Atl. (2d) 563, 68 R. I. 385, 27 Atl. (2d) 853.
United States v. *Texas*, 261 U. S. 253, 259.

ARGUMENT.

I.

IN VIEW OF THE INTENT OF CONGRESS AS MANIFESTED IN THE SOCIAL SECURITY ACT AND RELATED LEGISLATION, SECTION 3466 OF THE REVISED STATUTES IS NOT APPLICABLE TO GIVE A CLAIM OF THE UNITED STATES FOR SOCIAL SECURITY EXCISE TAXES A PRIORITY OVER THE CLAIM OF A STATE FOR UNEMPLOYMENT COMPENSATION CONTRIBUTIONS WHEN SUCH CONTRIBUTIONS ARE EXACTED UNDER A STATE STATUTE ADOPTED IN ACCORDANCE WITH THE CONGRESSIONAL POLICY EVINCED BY THE FEDERAL ACT.

This Court has repeatedly held that it will not apply Section 3466 where the concept of Federal priority is inconsistent with the intention of Congress, as manifested in a later Federal statute, and that this is so even where such other Federal statute does not in express terms waive such priority but leaves such intention to be inferred from the general provisions and purposes of such statute.

In *United States* v. *Marxen*, 307 U. S. 200, this Court held that the United States was not entitled to priority under Section 3466 on a claim transferred to it after the filing of a petition in bankruptcy, because of the general purposes of the Bankruptcy Act. This Court, at page 206, said:

> "But this principle of construction (priority to the United States) is subject to the limitation that the generality of language of the section is restricted * * * by legislative intention as shown in other statutes." (Bracketed words added.)

In *United States* v. *Guaranty Trust Company of New York*, 280 U. S. 478, this Court denied the United States priority under Section 3466 for loans due it under the Transportation Act because the intention to build up the credit standing of the railroads was inconsistent with the claimed priority. In so holding, this Court, at page 485, said:

> "To have given priority to debts due the United States pursuant to Title II, would have defeated the purpose of Congress. * * * The entire spirit of the Act makes clear the purpose that the rule leading to such consequences should not be applied."

In *Mellon* v. *Michigan Trust Company*, 271 U. S. 236, priority under Section 3466 was denied because the Federal Control Act, affecting the railroads, manifested an intention that the carriers under Federal control should be treated as before their transfer to Federal operation. In so holding, this Court, at page 240, said:

> "To permit the claimed preference, we think, would conflict with the spirit and broad purpose of the statute."

See also: *Cook County National Bank* v. *United States*, 107 U. S. 445.

This general principle is not challenged or limited by the holdings in such cases as *United States* v. *Texas*, 314 U. S. 480; *Price* v. *United States*, 269 U. S. 492; *Stripe* v. *United States*, 269 U. S. 503; *Spokane County* v. *United States*, 279 U. S. 80; *New York* v. *Maclay*, 288 U. S. 290; *United States* v. *Waddill*, 323 U. S. 353; or *Matter of White Plains Oil Corp.*, 287 N. Y. 141, cited by respondent in its brief in opposition. In none of those cases was it contended that the congress, in and by a subsequent Federal statute, had manifested its intention that, as to claims

arising under such subsequent statute, the priority provisions of Section 3466 were not to be applied.

Nor does the holding of this Court in *United States* v. *New York*, 315 U. S. 510, cited by respondent in its brief in opposition, challenge or limit this general principle. A plain reading of the *New York* case reveals its inapplicability to the question under consideration. The *New York* case did not involve Section 3466 of the United States Revised Statutes. It involved Section 64 (a) (4) of the Bankruptcy Act[1] which places State and Federal claims on a parity. The following three issues were considered in the *New York* case: (1) Whether the claim of the United States based on Sections 801 and 802 of Title VIII of the Social Security Act was a claim for a debt rather than for taxes and thus not entitled to priority under Section 64 (a) (4) of the Bankruptcy Act; (2) Whether a portion of the claim of the United States, based on Title IX of the Social Security Act, constituted a penalty rather than a tax; (3) The formula to be used in prorating the funds. Obviously the decision in the New York Case had no bearing on the question under consideration in the case at bar.

The above general legal principles being established, let us now examine the provisions of the Social Security Act and related legislation to ascertain whether in and by such statutes the Congress has manifested an intention that the provisions of Section 3466 shall not apply as between a claim of the United States for Social Security excise taxes and a claim of a State for unemployment contributions exacted under a State statute adopted in accordance with the congressional policy evinced by such Federal Act.

---

[1] "Section 64. Debts which have priority.—a. The debts to have priority in advance of the payment of dividends to creditors, and to be paid in full out of bankrupt estates, and order of payment shall be . . . (4) taxes legally due and owing by the bankrupt to the United States or any State or any subdivision thereof . . ." U. S. C., Title 11, § 104.

The petitioner's claim for unemployment compensation contributions is predicated on a law which, like all other State unemployment compensation statutes, was enacted in furtherance of a paramount Federal policy. The character and origin of petitioner's claim stem from Title IX of the Social Security Act. The purpose of Title IX, as we shall show was to create a National program of unemployment insurance by inducing every State in the Union to establish a system of unemployment insurance which would meet the minimum standards imposed by Congress. Through the agency of each State, Congress sought the imposition and collection of contributions to be used in the payment of benefits to unemployed workers. Such action by the States was deemed essential in order to promote the general welfare of the Nation and to serve the fiscal needs of the Federal Treasury by relieving it of the terrific drains made upon it by unemployment relief. *Steward Machine Company* v. *Davis,* 301 U. S. 548, 586-589, 591.

Although petitioner's claim for unemployment compensation contributions has been referred to as a claim of the State, it is in reality a claim of the Nation. In its relation to the welfare of the Country and the needs of the Federal Treasury, it is, unquestionably, tantamount to a claim of the United States. That Congress deemed the raising of revenue through the States for the relief of the unemployed to be of such tremendous National importance as to bar the application of Section 3466 is incisively demonstrated by (1) the exigencies which gave rise to a National program of unemployment insurance; (2) the provisions of Titles III, VII and IX of the Social Security Act; (3) the amendments to Title IX; (4) related legislation of Congress.

1. The critical conditions which gave rise to a national program of unemployment insurance.

These exigencies have been pertinently and graphically described by this Court. In *Steward Machine Company* v. *Davis, supra,* pp. 586-588, which involved the constitutionality of Title IX, this Court declared:

> ". . . there is need to remind ourselves of facts as to the problem of unemployment . . . During the years 1929 to 1936, when the country was passing through a cyclical depression, the number of the unemployed mounted to unprecedented heights. Often the average was more than ten million; at times a peak was attained of sixteen million or more. Disaster to the breadwinner meant disaster to dependants . . . The fact developed quickly that the states were unable to give the requisite relief. The problem had become national in area and dimensions. There was need of help from the nation if the people were not to starve. It is too late today for the argument to be heard with tolerance that in a crisis so extreme the use of the moneys of the nation to relieve the unemployed and their dependents is a use for any purpose narrower than the promotion of the general welfare. Cf. *United States* v. *Butler*, 297 U. S. 1, 65, 66, *Helvering* v. *Davis*, decided herewith. The nation responded to the call of the distressed. Between January 1, 1933 and July 1, 1936, the states . . . incurred obligations of $689,291,802 for emergency relief; local subdivisions an additional $775,675,366. In the same period the obligations for emergency relief incurred by the national government were $2,920,307,125, or twice the obligations of states and local agencies combined.
>
> According to the President's budget message for the fiscal year 1938, the national government expended for public works and unemployment relief for the three fiscal years 1934, 1935 and 1936, the stupendous total of $8,681,000,000. The *parens patriae* has many reasons—fiscal and economic as well as social and moral—for planning to mitigate disasters that bring these bur-

> dens in their train. . . . insofar as there was failure by the states to contribute relief according to the measure of their capacity, a disproportionate burden, and a mountainous one, was laid upon the resources of the Government of the nation."

In *Helvering* v. *Davis,* 301 U. S. 619, 641, which involved an attack upon the constitutionality of Titles II and VII of the Social Security Act (Old Age Benefits), this Court stated:

> ". . . The purge of nation-wide calamity that began in 1929 has taught us many lessons. Not the least is the solidarity of interests that may once have seemed to be divided. Unemployment spreads from state to state, the hinterland now settled that in pioneer days gave an avenue of escape. . . . Spreading from state to state, unemployment is an ill not particular but general, which may be checked, if Congress so determines, by the resources of the nation. If this can have been doubtful until now, our ruling today in the case of the *Steward Machine Co. supra,* has set the doubt at rest. . . ."

The national scope of the problem of unemployment was stressed by the President of the United States in his message to Congress on June 8, 1934 [2] wherein he declared: "We are compelled to employ the active interests of the Nation as a whole through government in order to encourage a greater security for each individual who composes it. . . . If, as our Constitution tells us, the Federal government was established, among other things, to promote the general welfare it is our plain duty to provide for that security upon which welfare depends . . ."

Both branches of Congress emphasized that unemployment relief posed the most serious question for the Nation.[3]

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[2] Cong. Rec. Vol. 78, Pt. 10, p. 10770.

[3] Senate Report No. 628, 74th Congress, 1st Session, p. 10; House Report No. 615, 74th Congress, 1st Session, p. 7.

2. Title IX of the Social Security Act.

To cope with the problem, Congress enacted Titles III, VII and IX of the Social Security Act (*Infra* pp. 34-44) Briefly, Title IX provides that every employer (with stated exceptions) of eight or more workers is to pay an annual excise tax, measured by wages. The taxpayer, however, is allowed a credit against the Federal tax for the amount of contributions paid into an unemployment compensation fund established under a State law, said credit not to exceed 90 per cent of the Federal tax.[4] Such credit is allowable only if the State law is periodically certified by the Social Security Board to the Secretary of the Treasury as satisfying certain minimum criteria (*Infra* pp. 39-41). Among these criteria, which will shortly be considered, is the requirement that the State law provide that the contributions paid into the State fund be promptly paid over to the Secretary of the Treasury to the credit of the "Unemployment Trust Fund." The Secretary of the Treasury is directed to invest the funds (except such portion as is, in his opinion, required to meet current withdrawals) in government securities. He is directed to pay out of the fund, to any competent agency, such sums as it shall duly requisition from the amount standing to its credit. The money withdrawn from the Unemployment Trust Fund by the State agency must be used solely for the payment of unemployment compensation benefits.

The plain purpose of the credit is to build up an adequate fund through the payment of contributions into State unemployment compensation systems, thereby sustaining the National burden of unemployment and safeguarding the Federal Treasury. To the extent that taxpayers make con-

[4] The remaining 10 per cent is used in covering the costs of administering the State unemployment compensation systems. See *infra*, p. 20.

tributions to a State unemployment compensation fund, the drain upon the Federal Treasury is diminished. *Steward Machine Company* v. *Davis*, *supra*, pp. 589-591. The Federal tax and the credit are "approximate equivalents." *Steward Machine Company* v. *Davis*, *supra*, p. 591. The needs of the Federal Treasury can be cared for as well by payments of unemployment compensation contributions to the States as by payment of taxes to the United States. *Rivard, et al.* v. *Bijou Furniture Company*, 68 R. I. 358, 361, 27 Atl. (2d) 853, 855. That these principles were uppermost in the mind of Congress in extending the credit is apparent from an examination of the reports of both the Senate Finance Committee and the House Committee on Ways and Means.[5]

Moreover, Congress believed that the general welfare of the country would be better served by the payment of contributions into State unemployment compensation funds than by the payment of the tax to the Federal government. *Steward Machine Company* v. *Davis*, *supra*, p. 589.

As indicated, Title IX sets out certain criteria which the State law must satisfy before the taxpayer, who pays contributions under such a law, may avail himself of the credit. These criteria are manifestly designed to promote the fiscal policy of the Federal government by insuring that the State law under which the taxpayer makes his contributions is a genuine and workable unemployment insurance measure. If the State statute were merely masquerading as an unemployment compensation law and had been enacted to take advantage of the credit for some foreign purpose, the Federal fiscal policies which the credit is calculated to serve would be frustrated. *Steward Machine Company* v. *Davis*, *supra*, p. 593.

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[5] Senate Report No. 628, 74th Congress, 1st Session, p. 15; House Report No. 615, 74th Congress, 1st Session, p. 16.

3. Titles III and VII of the Social Security Act.

To further encourage the State to establish unemployment compensation systems, Congress, in Title III of the Social Security Act, provided for grants to cover the administrative costs of such systems (Appendix, *infra*, pp. 30-33). The funds for such grants are derived from the 10% of the Federal tax which the Government retains for the purpose of meeting the costs of administering the State unemployment compensation systems.[6] However, as in Title IX, the State unemployment compensation laws are required to meet certain minimum criteria, intended to advance the fiscal policy of the United States (Appendix, *infra*, pp. 35-37).

That Congress assumed responsibility for the successful operation of the State unemployment compensation systems is evidenced not only by the standards which it prescribed in Titles III and IX and by its supervision of the "Unemployment Trust Fund" but also by the control which it has exercised through the activities of the Social Security Board which it created under Title VII of the Social Security Act (Appendix, *infra*, pp. 37-38). Through the Social Security Board, Congress has continuously reviewed State unemployment compensation legislation

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[6] Message of the President to Congress, January 17, 1935, Cong. Rec., Vol. 79, Pt. 1, p. 546; Hearings before the Senate Committee on Finance on S. 1130, 74th Cong., 1st Session, p. 112; Report of the President's Committee on Economic Security, p. 19; House Report No. 1855, 78th Congress, 2nd Session, p. 27; P. Douglas, Social Security in the United States (1936), pp. 146-148. ". . . administrative costs, if we judge from German and English experience, are likely to equal one-ninth of the benefits or one-tenth of the total costs. See my Standards of Unemployment Insurance, pp. 122-123. It was not by accident, therefore, but rather from the very structure of unemployment insurance itself that the federal government was authorized in Title IX to retain one-tenth of the tax on payrolls instead of for example one-twentieth or, as in the federal inheritance tax two-tenths." Social Security in the United *States*, *supra*, footnote, p. 147.

and administration to assure conformity with Federal standards, has determined and grr ... the amount of funds necessary for proper administration of State unemployment compensation systems, has guided the States in improving their legislation and administration, and has engaged in research designed to analyze the character of the problem of unemployment and to serve as a basis for the revision of legislation and administrative techniques dealing with that problem.[7]

4. Amendments to Title IX of the Social Security Act.

It must be emphasized that Title IX of the Social Security Act does not establish a system of unemployment compensation. No provision is made therein for the payment of benefits to unemployed persons. By the credit provisions of Title IX and the grants for administrative purposes in Title III, the States were induced to set up unemployment of compensation systems to promote the general welfare of the Nation and to serve the fiscal needs of the Federal Treasury.

The heart of the unemployment compensation program is in the benefits which are paid by the States to unemployed workers and in the contributions which are collected by the States for the payment of such benefits. Time and time again, Congress has demonstrated that it is the payment of contributions to the States which advances the fiscal purposes of the Federal government. Although the credit against the Federal tax was originally allowed only if contributions to State funds were paid within a specified period of time, Congress has repeatedly amended Title IX so as to extend the credit to taxpayers who are delinquent

[7] The Social Security Board, Eighth American Scientific Congress May 10-18, 1940.

in the payment of contributions, in order to induce them to pay their contributions to the States.[8]

5. Related Legislation.

The Social Security Act became law on August 14, 1935. The payment of Federal taxes under Title IX commenced in 1936. A number of the States did not enact their unemployment compensation laws until some time later. In the meantime, the employers in such States, who were subject to the Federal tax, paid the full amount of the tax to the National government. The intention of Congress to achieve the purposes of Title IX through the payment of contributions into State unemployment compensation systems rather than through the payment of taxes to the Federal government is strikingly revealed in its action, in which it turned over 90 per cent of the taxes collected from the foregoing employers to the State unemployment compensation systems which had been established subsequent to the initial payment of Federal taxes under Title IX.[9]

There is still further proof, if need be, of the deep concern which Congress has manifested in the maintenance and growth of State unemployment compensation funds. Congress has fully recognized that such funds would play a major role during the period of post-war readjustment and would serve as the first line of defense for the millions of workers employed in war industries who would be laid off and unemployed during industry's reconversion and readjustment to peace-time production. The Senate and the House appointed Special Committees on Post-war

[8] Section 1601, Internal Revenue Act of 1939; Section 701, Second Revenue Act of 1940; Section 701 Revenue Act of 1941; Section 602 Revenue Act of 1943.

[9] Public Act 353, Ch. 755, 50 Stat. 754; Second Deficiency Appropriation Act 1938, Ch. 681, 52 Stat. 1148.

Economic Policy and Planning, which held extensive hearings on the problem of unemployment compensation in the post-war period.[10] Interviews with representatives of important government and private agencies on post-war problems and plans disclosed that "The fear of unemployment after the war colors the thinking of all the agencies interviewed. Those concerned with the labor problems give it first rank in their planning." [11] As a result of the recommendations of the said Special Committees on Post-war Economic Policy and Planning,[12] Congress enacted legislation guaranteeing the solvency of State unemployment compensation funds.[13]

In view of the tremendous importance which Congress attached to the accumulation of unemployment compensation contributions by the States, it is inconceivable that Congress expected or desired the collection of such contributions to be impaired or jeopardized by the invocation of Section 3466. On the contrary, the legislative purposes underlying Titles III, VII and IX of the Social Security Act reflect an intention on the part of Congress to subordinate the operation of Section 3466 to the paramount interest of insuring the success of the National program of unemployment relief.

In holding that the claim of the petitioner was subordinate to the claim of the United States for taxes under

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[10] Hearings before the Special Committee on Post-war Economic Policy and Planning, United States Senate, 78th Congress, Second Session, part 3, Unemployment Compensation; Hearings before the Special Committee on Post-war Economic Policy and Planning, House of Representatives, 78th Congress, Second Session, Parts 2 and 3, Economic Problems of the Transition Period.

[11] Senate Document No. 106, 78th Congress, 1st Session, p. 79.

[12] Senate Report No. 539, part 5, 78th Congress, 2nd Session, p. 6; House Report No. 1855, 78th Congress, 2nd Session, pp. 27-28.

[13] War Mobilization and Reconversion Act (50 U. S. C. A. App. 1667); Senate Report No. 565, 79th Congress, 1st Session, p. 2.

Title VIII, the Supreme Court of Illinois looked to form, not substance, and disregarded the character and significance of petitioner's claim. In the light of what has already been said, it is unnecessary to labor the point that petitioner's claim serves a Federal purpose, that it is tantamount to a claim of the United States, and that it stems from Title IX of the Social Security Act.

Both Titles VIII and IX are parts of the same Act and are designed to effectuate a common purpose—the general welfare of the United States. ". . . the ill is all one, or at least not greatly different, whether men are thrown out of work because there is no longer work to do or because the disabilities of age make them incapable of doing it. Rescue becomes necessary irrespective of the cause. The hope behind this statute is to save men and women from the rigors of the poorhouse as well as from the haunting fear that such a lot awaits them when journey's end is near." *Helvering* v. *Davis, supra,* p. 641. Congress deemed unemployment "an even more prevalent cause of dependency than old age; in fact . . . the most serious of all hazards confronting industrial workers. . . ."[14] Obviously, Congress did not intend that a claim for unemployment compensation contributions should be subordinated to a claim for taxes for old-age security.

It is important to note that in its oral argument before this Court in *Steward Machine Company* v. *Davis, supra,* p. 559, the United States contended that in imposing and collecting contributions under their unemployment compensation laws, the States were raising revenue for the general welfare of the United States; that the framers of the Constitution contemplated three different methods of raising revenue for the general welfare of the Nation.

[14] House Report No. 615, 74th Congress, 1st Session, page 7; Senate Report No. 628, 74th Congress, 1st Session, page 10.

"The first was direct Federal taxation collected by Federal officers. The second was that the Federal government lay the tax but the collection be by the State officers. The third method is that the States raise the revenue for the general welfare of the United States."

To invoke Section 3466 on the grounds that the revenue for old-age security is raised by the Federal government, whereas the revenue for unemployment relief is raised by the States, is totally devoid of merit and utterly foreign to the spirit and purpose of the Social Security Act. The clear-cut purpose and intention of Congress to treat unemployment relief as a Federal obligation and to assume the responsibility for the success of the unemployment compensation systems initiated under Title IX of the Social Security Act is not to be defeated by the sophistry of treating a claim for unemployment compensation contributions as a State claim as distinguished from a Federal claim.

In view of the above, we submit that in and by the enactment of the Social Security Act and related legislation the Congress has clearly manifested an intention that the provisions of Section 3466 shall not apply as between a claim of the United States for Social Security excise taxes and a claim of a State for unemployment compensation contributions exacted under a State statute adopted in accordance with the congressional policy evinced in such Federal Act.

In the recent case of *Rivard* v. *Bijou Furniture Co.*, 67 R. I. 251, 21 Atl. (2d) 563, the Supreme Court of Rhode Island passed upon substantially the same situation as is involved under this portion of the case at bar. In holding that the United States was not entitled to priority under Section 3466 because such a preference would be in con-

flict with the general policy, spirit and purposes of the Social Security Act, that court, in its original opinion, at page 259, said:

> "It is clear to us that the intention of Congress in the federal act was to have the federal government guide and assist the state in a comparatively new field of legislation. It is also clear that congress deemed cooperation between the two governments indispensable for success. To permit the claimed preference by the United States would conflict with the policy, spirit and broad purposes of the federal act. In the circumstances, we believe that congress intended to exclude the indebtedness to the United States in the case before us from the scope of sec. 3466. *United States* v. *Guaranty Trust Co.*, 280 U. S. 478; *Mellon* v. *Michigan Trust Co.*, 271 U. S. 236, See *United States* v. *Marxen*, 307 U. S. 200, 206. It is therefore our opinion that sec. 3466 is inapplicable in this case to the claims now under consideration."

On rehearing, the government cited four recent cases, two of which are cited in the respondent's brief in opposition in the case at bar. The Supreme Court of Rhode Island, in a modified opinion, reported in 68 R. I. 358, 27 Atl. (2d) 853, considered these cases but refused to retract such previous ruling, saying (page 362):

> "* * * it is urged that the supreme court has recently decided a case which indicates a contrary view to the one we hold. *United States* v. *New York*, No. 238, October Term, 1941, filed March 2, 1942. We have carefully read that case, and, in our opinion, it does not touch upon the precise question here. Moreover, far from being of assistance to the United States in the contention which it makes here, the court seems to entertain a view of the scope and purpose of Title IX that is not unlike what we hold. Thus on page 5, the court, speaking through Mr. Justice Byrnes, says: 'Either the state or the federal government must provide the money to meet the requirements of relief to the unemployed. By his contributions to the state, an

employer has diminished the demand upon the *financial resources of the federal government.* (Italics ours.)

"Another case which has been decided by the supreme court since our former opinion was filed has been cited to us by the United States to show that R. S. § 3466 must be applied to the case at bar. *United States* v. *Emory,* No. 33, October Term, 1941, filed December 15, 1941. That case involved the national housing act. It was contended in that case, among other contentions, that because of the objectives and provisions of that act, congress must have impliedly intended to surrender the priority accorded to the United States under R. S. § 3466. The court rejected this contention but was closely divided.

"Apparently the court divided on the question whether the national housing act ought to be given the same construction with reference to R. S. § 3466 as was given to the national banking act in *Cook County National Bank* v. *United States,* 107 U. S. 445, and to the transportation act of 1920 in *United States* v. *Guaranty Trust Co.,* 280 U. S. 478. In each of those cases it was held that § 3466 was inapplicable because, from the nature of the legislation, congress impliedly intended that the United States should have no priority under that section. The majority in the *Emory* case felt that such intention could not reasonably be found in the national housing act.

"In the case at bar we are concerned with an act which differs widely from the national housing act. That act contains no comparable provisions to Titles VIII and IX of the social security act. The fiscal provisions of both of those titles, as well as the co-operative feature of Title IX, especially distinguish the social security act from the national housing act. Therefore, we do not think that the construction of that act in the *Emory* case is either a precedent or a safe guide for the construction of the social security act in the case at bar.

"The United States has also cited two other very recent cases which, it urges, lend some support to its contention, although neither involved the precise ques-

tion here. *United States* v. *Texas*, U. S. Supreme Court, October Term, 1941, filed December 22, 1941, and *Matter of White Plains Oil Corp.*, N. Y. Court of Appeals, November 27, 1941. We have read each of those cases and we do not think either one assists the United States under the facts of the instant case."

We therefore submit that in view of the intent of Congress as manifested in the Social Security Act and related legislation, Section 3466 of the Revised Statutes is not applicable to give a claim of the United States for Social Security excise taxes a priority over the claim of a State for unemployment compensation contributions when such contributions are exacted under a State statute adopted in accordance with the congressional policy evinced in the Federal act.

II.

THE DEBTOR WAS NOT INSOLVENT WITHIN THE MEANING OF SECTION 3466 OF THE REVISED STATUTES.

Section 3466 of the Revised Statutes (31 U.S.C.A. 191), with which we are here concerned, provides as follows:

> "Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed."

Mere insolvency will not invoke the application of this section. The insolvency contemplated therein must be manifested in one of the modes specified in that statute. As this court, in *United States* v. *Oklahoma*, 261 U. S. 253, took occasion, at page 260, to point out:

> "* * * Mere inability of the debtor to pay all his debts in ordinary course of business is not insolvency within the meaning of the act, but it must be manifested in one of the modes pointed out in the latter part of the statute which defines or explains the meaning of insolvency referred to in the earlier part. *United States* v. *State Bank of North Carolina*, 6 Pet. 29, 35; *United States* v. *Fisher*, 2 Cranch, 358, 390; *United States* v. *Hooe*, 3 Cranch, 73, 90; *Prince* v. *Bartlett*, 8 Cranch, 431, 433; *Conard* v. *Atlantic Insurance Co.*, 1 Pet. 386, 439; *Brent* v. *Bank of Washington*, 10 Pet. 596, 611; *Field* v. *United States*, 9 Pet. 182, 201. * * *"

Except when the estate of a deceased debtor is involved, Section 3466 applies only to three enumerated situations—(1) when the insolvent debtor makes a voluntary assignment of its property; (2) when the property of an absconding, concealed or absent debtor is attached by law; or (3) when an act of bankruptcy is committed. *United States* v. *Oklahoma, supra; Conard* v. *Atlantic Insurance Company, supra; United States* v. *Fisher*, 2 Cranch, 358, 390; *Beaston* v. *Farmers Bank*, 12 Pet. 102, 133-134, 138; *Kennebec Box Company, Inc.* v. *O. S. Richards Corp.*, 299 F. 871, 873; *Nolte* v. *Hudson Navigation Company*, 8 F. (2) 859, 865-866.

The case at bar is not concerned with a voluntary assignment of property or with an absconding, concealed or absent debtor. Consequently, Section 3466 is inapplicable unless it is shown that the debtor committed an act of bankruptcy. Section 21, Chapter 3, Title 11, of the U. S.

Code (11 U. S. C. A. 21) defines an act of bankruptcy as follows:

> "Acts of bankruptcy by a person shall consist of his having (1) conveyed, transferred, concealed, removed, or permitted to be concealed or removed any part of his property, with intent to hinder, delay, or defraud his creditors or any of them; or (2) transferred, while insolvent, any portion of his property to one or more of his creditors with intent to prefer such creditors over his other creditors; or (3) suffered or permitted, while insolvent, any creditor to obtain a lien upon any of his property through legal proceedings and not having vacated or discharged such lien within thirty days from the date thereof or at least five days before the date set for any sale or other disposition of such property; or (4) made a general assignment for the benefit of his creditors; or (5) while insolvent or unable to pay his debts as they matured, procured, permitted, or suffered voluntarily or involuntarily the appointment of a receiver or trustee to take charge of his property; or (6) admitted in writing his inability to pay his debts and his willingness to be adjudged a bankrupt."

The United States does not contend nor is there anything in the record to indicate that the debtor committed an act of bankruptcy as defined under clauses (1), (2), (4) or (6) of the above provision.

Clauses (3) and (5) must, therefore, be considered. Clause (3) applies to a person who suffers or permits, "while insolvent, any creditor to obtain a lien upon any of his property through legal proceedings. . . ." The lien of a judgment against personal property arises at the time the execution is placed in the hands of the bailiff for levy. (Ch. 77, Sec. 9, Ill. Rev. Stat., 1943.) Such execution was placed with the bailiff for levy sometime prior to the filing of petitioner's foreclosure suit (R. 7). In order to show that the debtor committed an act of bankruptcy under

clause (3), the United States was required to establish that the debtor was insolvent at the time the execution was placed with the bailiff for levy. *Citizens Banking Company* v. *Ravenna National Bank,* 234 U. S. 360, 364; *Stitzer Hotel Company* v. *Beyer,* 55 F. (2d) 620, 621; *In Re Ross and O'Brien Iron Works, Inc.,* 58 F. (2d) 961, 962; *In Re Fisher,* 219 F. 638, 639; *In Re McGraw,* 254 F. 442, 446.

Neither the petitioner's foreclosure suit brought on June 29, 1942 (R. 1-9), nor the intervening petition of the United States, filed subsequent to October 28, 1942 (R. 18-19, 43), contain any showing or allegation that the debtor was insolvent when the execution was placed in the hands of the bailiff for levy. The record is devoid of any such evidence. The United States makes no such contention. Plainly, no act of bankruptcy was committed as defined by clause (3).

Clause (5) remains to be considered. Petitioner's foreclosure suit was brought to enforce his statutory lien on the personal property of the debtor, used by it in connection with its business (R. 6). The receivership was merely incidental to the enforcement of the lien. The type of receivership contemplated in clause (5) is one that involves a liquidation of all of the property of the bankrupt within the jurisdiction, and in substance amounts to a general assignment of the bankrupt's assets. *Conard* v. *Atlantic Insurance Company, supra,* p. 439; *Elfast* v. *Lamb,* 111 F. (2d) 434, 436. It does not contemplate a receivership to aid a lienholder in realizing on his lien. *Elfast* v. *Lamb,* 111 Fed. (2) 434, 436; *Duparquet Company* v. *Evans,* 297 U. S. 216, 224; *Standard Accident Insurance Company* v. *Sheftall & Company,* 53 F. (2d) 40, 41. No act of bankruptcy was, therefore, committed, as defined in clause (5).

It should be noted that under clause (5) no act of bankruptcy is committed unless the debtor is insolvent at

the time of the appointment of the receiver. The United States has not shown or alleged that the debtor was insolvent when the receiver was appointed. Its intervening petition, filed approximately four months after the appointment of the receiver, states that "the defendant here *is* insolvent and is unable to pay and discharge in full all of its indebtedness." (R. 18) Petitioner's answer to the said intervening petition merely admitted that the debtor was insolvent as of the date of the said answer (R. 20).

Although petitioner, in his foreclosure suit, alleged that he believed the debtor to be insolvent (R. 7) such an allegation is totally insufficient to constitute insolvency under clause (5).[15]

In *United States* v. *Oklahoma, supra*, this Court, at pages 260-263, took occasion to point out that:

> "* * * the complaint does allege that the bank was and is insolvent. But the word 'insolvent' is used in different senses. * * *
>
> "The allegations of the complaint do not show the debtor to be insolvent within the meaning of § 3466 or of the Bankruptcy Act.
>
> * * *
>
> "The complaint does not expressly allege that the bank committed any act of bankruptcy or state any facts as constituting an act of bankruptcy. * * *
>
> "As insolvency within the meaning of § 3466 was not necessary for the taking of possession by the bank commissioner and is not shown to exist, and as no act of bankruptcy as defined by applicable federal legislation on the subject of bankruptcies or as defined by any law of Oklahoma is shown to have been committed, and as the debtor was not divested of its

[15] "A person shall be deemed insolvent within the provisions of this title whenever the aggregate of his property, exclusive of any property which he may have conveyed, transferred, concealed, removed, or permitted to be concealed or removed, with intent to defraud, hinder, or delay his creditors, shall not at a fair valuation be sufficient in amount to pay his debts." (11 U. S. C. A. 1.)

assets in one of the modes specified in § 3466, the case is not within that section."

Tested by the above principles, the allegations of insolvency in the case at bar were clearly inadequate to sustain the burden which the United States had of showing that the debtor was insolvent within the meaning of Section 3466 at the time of the appointment of the receiver.

Furthermore, the plaintiff's complaint in his foreclosure suit did not request that a general receiver be appointed. The plaintiff stated that: "The personal property subject to the lien herein, being foreclosed, is scant security for the debt due the Director of Labor of the State of Illinois, and unless a receiver be appointed for all of the said property, pending a full and complete hearing upon the issues herein, the plaintiff will suffer financial loss and said property will be wasted" (R. 7). The plaintiff then prayed for the appointment of a receiver for "said property" (R. 9). This is not the type of receivership which is contemplated by Section 3466.

In the case of *Elfast* v. *Lamb*, 111 F. (2d) 434, at page 436, the Circuit Court of Appeals said:

> "The type of receivership contemplated as an act of bankruptcy is one that involves a liquidation of all of the property of the bankrupt within the jurisdiction and in substance amounts to a general assignment of the bankrupt's assets. * * * A receivership in foreclosure does not constitute an act of bankruptcy."

It is therefore submitted that the debtor was not insolvent within the meaning of Section 3466 of the Revised Statutes and that therefore the United States is not entitled to priority under that section.

III.

THE STATE'S LIEN WAS SO SPECIFIC AND SO FAR PERFECTED AS EFFECTIVELY TO EXCLUDE THE FUNDS IN QUESTION FROM THE ESTATE OF THE DEBTOR, AND THEREBY TO DEFEAT THE FEDERAL GOVERNMENT'S RIGHT OF ACCESS TO SUCH FUNDS UNDER SECTION 3466.

Even if it be assumed (1) that Section 3466 is applicable to competing claims by the United States for Social Security excise taxes on one hand, and by a State for unemployment compensation exacted under a State statute adopted in accordance with the congressional policy evinced by the Federal Act on the other, and (2) that the debtor was insolvent within the intendment of Section 3466, nevertheless the United States is not entitled to priority under said section because the lien of the State was so specific and so far perfected as effectively to exclude the funds in question from the estate of the debtor, thereby defeating the Federal Government's right of access to such funds.

1. Where a lien is so specific and so far perfected as effectively to exclude certain property from the estate of the debtor, then, as to such property, the provisions of Section 3466 are not applicable.

One of the earliest (1817) cases mentioning this exception is *Thelusson* v. *Smith*, 15 U. S. (2 Wheat.) 396, where this Court, speaking through Mr. Justice Washington, at page 425, said:

> "The United States are to be first satisfied; but then, it must be out of the debtor's estate. If, therefore, before the right of preference has accrued to the United States, the debtor has made a *bona fide* conveyance of his estate to a third person, or has mortgaged the same to secure a debt, or if his property

has been seized under a *fi. fa.*, the property is divested out of the debtor, and cannot be made liable to the United States."

In the subsequent case of *Conard* v. *Atlantic Insurance Co.*, 26 U. S. (1 Peters) 386, this Court, through Mr. Justice Story, after quoting the above language from *Thelusson* v. *Smith, supra,* at page 441, said:

"But it has never been decided by this court, that the priority of the United States will divest a specific lien, attached to a thing, whether accompanied by possession or not."

and at page 443, went on to say:

"To this state of things, the language of the court in *Thelusson* v. *Smith* is to be applied, when it is said, that if the debtor's property is seized under a *fi. fa.* it is divested out of the debtor, and cannot be liable to the United States. * * *

"* * * If he (the creditor) possess such a lien, he must enforce it in the manner prescribed by law; and if he does, that may so far affect the assignees actually subjected to such liens. But it gives him no rights to the fund, until he has perfected his lien according to the course of the law. * * * and it is obvious that it (*Thelusson* v. *Smith*) established no such proposition, as that a specific and perfected lien can be displaced by the mere priority of the United States; since that priority is not of itself equivalent to a lien." (Bracketed material added.)

In *Spokane County* v. *United States*, 279 U. S. 80, 94, 95, this type of exception was again indicated but a decision thereon was reserved.

In *New York* v. *Maclay*, 288 U. S. 290, this exception was again touched upon but decision reserved, this Court saying, at pages 293 and 294:

"The ruling there (*Thelusson* v. *Smith*) was that the general lien of a judgment upon the lands of the

> insolvent debtor is subordinate to the preference established by the statute unless seizure by a marshal or some other equivalent act has made the lien specific and brought about a change of title or possession. * * * Into these refinements and their consequences there is no need to enter now." (Bracketed material added.)

In *United States* v. *Knott*, 298 U. S. 544, this Court, holding that the lien there involved was inchoate both as to beneficiaries and amounts, at pages 549-551, quoted the above language from *Thelusson* v. *Smith, supra,* and went on to say:

> "Unless the law of Florida effected, at least as early as the date of insolvency, either a transfer of title from the company, or a specific perfected lien in favor of the Florida creditors, the United States is entitled to priority."
>
> "Such an interest lacks the characteristics of a specific perfected lien which alone bars the priority of the United States."

In the more recent case of *United States* v. *Texas*, 314 U. S. 480, this court again recognizes this principle, saying at page 484:

> "Section 3466 mentions no exception to its requirement that 'the debts due to the United States shall be first satisfied.' It is nevertheless true that in several early decisions this Court read an exception into the section in the case of previously executed mortgages. *Thelusson* v. *Smith*, 2 Wheat. 396, 426; *Conard* v. *Atlantic Insurance Co.*, 1 Pet. 386; *Brent* v. *Bank of Washington*, 10 Pet. 596, 611, 612. This doctrine seems to have been based on the theory that mortgaged property passes to the mortgagee and is no longer a part of the estate of the mortgagor. See *Conard* v. *Atlantic Insurance Co., supra*, at 441-442. The question of whether the priority of the United States under § 3466 would also be defeated by a specific and perfected lien upon property, whose title remained in the

debtor was reserved in those cases. *Ibid.*; *Brent* v. *Bank of Washington, supra,* at 611-612. However, it was determined that a general judgment lien upon the lands of an insolvent debtor does not take precedence over claims of the United States unless execution of the judgment has proceeded far enough to take the land out of the possession of the debtor. *Thelusson* v. *Smith, supra,* at 425-426."

The Court, in holding that the State's lien in that case was neither specific nor perfected, went on to say, at pages 486-488:

"It is urged, however, that Article 7065a-7 by its own force creates a specific and perfected lien. Support for this contention is said to lie in the fact that the statutory lien purports to affect only the property of the distributor which is 'devoted to or used in his business as a distributor,' rather than his property in general. This is thought to make the lien sufficiently specific. * * *

"With respect to this contention it may first be said that the 'property devoted to or used in his business as a distributor' is neither specific nor constant. But a more important consideration is that the amount of the claim secured by the lien is unliquidated and uncertain. * * *

"* * * As we have indicated, the statutory scheme reveals that the legislature contemplated resort to the courts. * * * while it was clearly intended by Article 7065a-7 to create a lien in favor of the State, we must conclude that of necessity it was nothing more than an inchoate and general lien. * * * Like the tax lien in *New York* v. *Maclay, supra,* it served 'merely as a *caveat* of a more perfect lien to come.' 288 U. S. at 294."

In the recent case of *United States* v. *Waddill Co.*, 323 U. S. 353, this general principle was again recognized by this Court, when it said, at page 355:

"The words of § 3466 are broad and sweeping and, on their face, admit of no exception to the priority of claims of the United States. *Thelusson* v. *Smith*, 2 Wheat. 396, 425; *United States* v. *Texas*, *supra*, 484. But this Court in the past has recognized that certain exceptions could be read into this statute. The question has not been expressly decided, however, as to whether the priority of the United States might be defeated by a specific and perfected lien upon the property at the time of the insolvency or voluntary assignment. *Conard* v. *Atlantic Insurance Co.*, 1 Pet. 386, 441, 444; *Brent* v. *Bank of Washington*, 10 Pet. 596, 611, 612; *Spokane County* v. *United States*, 279 U. S. 80, 95; *United States* v. *Knott*, 298 U. S. 544, 551; *New York* v. *Maclay*, *supra*, 293, 294; *United States* v. *Texas*, *supra*, 485, 586. • • •"

In holding that the landlord's lien in that case was neither specific nor perfected, this Court, at pages 357-360, went on to say:

"Tested by its legal effect under Virginia law, the landlord's lien in this instance appeared to serve 'merely as a *caveat* of a more perfect lien to come.' *New York* v. *Maclay*, *supra*, 294. As of the date of the voluntary assignment, it was neither specific nor perfected. It gave the landlord only a general power over unspecified property rather than an actual interest in a definitive portion or portions thereof.

"Specificity was clearly lacking as to the lien on June 19, 1941, the date of the assignment. On that day it was still uncertain whether the landlord would ever assert and insist upon its statutory lien. Until that was done it was impossible to determine the particular six months' rent, or a proportion thereof, upon which the lien was based. • • • Moreover, while the lien legally attached to all such property as might be on the premises when the lien was asserted or within thirty days prior to distraint, the landlord could distrain goods only to the extent necessary to satisfy the rent justly believed to be due, the tenant possessing an action for damages for excessive distraint. Va. Code § 5783; *Fishburne* v. *Engledove*, 91 Va. 548, 22

S. E. 354; *Gurfein* v. *Howell*, 142 Va. 197, 128 S. E. 644. Thus until the extent of the lien was made known by the landlord and until some steps had been taken to distrain or attach sufficient property to satisfy the lien, it was impossible to specify the goods actually and properly subject to the lien. * * * These factors compel the conclusion that neither the rent secured by the lien nor the property subject to the lien was sufficiently specific and ascertainable on the day of the voluntary assignment to fall within the terms of the suggested exception.

"Nor was the statutory lien perfected as a matter of actual fact, regardless of how complete it may have been as a matter of state law. The tenant was divested of neither title nor possession by the silent existence of the landlord's statutory lien on the date of the assignment. Only after the lien was actually asserted and an attachment or a distraint leveled, enabling the landlord to satisfy his claim out of the seized goods, could it be argued that such goods severed themselves from the general and free assets of the tenant from which the claims of the United States were entitled to priority of payment. * * * Something more than a '*caveat* of a more perfect lien to come' was necessary.

"* * * At least until actual distraint, therefore, there was no certainty as to the property subject to the lien and no transfer of title or possession relative to any property. Such a lien cannot be said to be so explicit and perfected on the date of the voluntary assignment as to fall within the claimed exception to the priority of the United States."

2. Under the facts in the instant case, the lien of the State was so specific and had been so far perfected as effectively to exclude certain property from the estate of the debtor, and therefore the proceeds of the sale of such property by the receiver belong exclusively to the State.

Section 26 (a) of the Unemployment Compensation Act of Illinois (Ill. Rev. Stat., 1943, Ch. 48, Par. 243), in pertinent part, provides as follows:

"A lien is hereby created in favor of the Director upon all the personal property on rights thereto owned or thereafter acquired by any employer and used by him in connection with his trade, occupation, profession or business from whom contributions, interest or penalties are or may hereafter become due. Such lien shall be for a sum equal to the amount at any time due from such employer to the Director on account of contributions, interest and penalties thereon. Such lien shall attach to such property at the time such contributions, interest or penalties became, or shall hereafter become, due."

The relator is the Director mentioned in the above statute (R. 1). The debtor was an employer within the above statute (R. 1). The claims of the Director under such statute were for certain definite fixed sums, based upon reports filed by the debtor with the Director (R. 3, 4, 9-12). Notices of such liens were duly filed by the Director with the Recorder of Deeds of Cook County, Illinois, as provided by statute, on April 3, 1942; May 8, 1942; and May 20, 1942 (R. 5). On June 3, 1942, an execution was issued on a judgment of the Associated Agencies, Inc., another creditor and the personal property of the debtor subject to the State's lien seized by the bailiff, who threatened to sell the same to satisfy said judgment on June 29, 1942 (R. 6, 7). On June 29, 1942, the Director filed suit in the Circuit Court of Cook County to enjoin such threatened sale, to foreclose the Directors' lien upon such property and to appoint a receiver (R. 1-9). On that same date a receiver was appointed as prayed and the sale by the bailiff enjoined (R. 13, 42). By that time, the Director's lien was not only specific but had been perfected. The Notice of Lien had been filed and recorded. The Lienor, the Director, was specific. The amount due was definite and fixed in amount. The property, subject to the lien, had not only

been excluded from the possession of the debtor but was also fixed and specific and, being in the custody of the bailiff, remained fixed and constant. All substantial aids to the enforcement of the State's lien had been utilized.

We submit that this was not merely "a *caveat* of a more perfect lien to come" but a lien so specific and so far perfected as effectively to exclude such property from the estate of the debtor within the principles laid down in the foregoing cases, and thus to defeat the priority of the United States by defeating its right of access to funds derived by the receiver through the sale of such property.

3. The adverse ruling of the Supreme Court of Illinois was based entirely upon the very dissimilar facts of a companion case and under an erroneous application of this court's ruling in the Waddill case, and may and should be reversed by this court.

A plain reading of the opinion of the Supreme Court of Illinois (R. 42-55), shows that its adverse ruling on this issue was based entirely (1) upon the very dissimilar (as to this issue) facts in a companion case, not upon the facts in the case at bar; and (2) upon this court's ruling in *United States* v. *Waddill Co.*, 323 U. S. 353, which applies to the facts in such companion case but not to such facts as are present in the case at bar.

The only statement of facts made by the Supreme Court of Illinois relating to this issue is as follows (R. 52):

> "It will be remembered that the only thing done by the Director to establish or enforce such lien, as against the property of the debtor, was the filing of this suit on April 2, 1943, whereas the assignment was made by the insolvent debtor on January 9, 1943."

These are the facts in the companion case of *People for the use of Francis B. Murphy, Director of Labor, Appellee,*

v. *Advertising Review Publishing Company, et al.*, (*United States of America, Appellant,*) No. 28490, known in this court as *People of the State of Illinois, ex rel. Robert L. Gordon, Director of Labor, Petitioner*, v. *United States of America, Respondent*, No. 749 of this term. See R. 1-16 in that case.

The facts in the case at bar are as set forth in the preceding section of this brief and not as indicated by the above quoted statement of the Supreme Court of Illinois. The court has, obviously, confused the facts in the companion case with the facts in this case, which are entirely different.

After stating the facts of the companion case, the Supreme Court of Illinois cites only *United States* v. *Waddill Co.*, 323 U. S. 353, and concludes (R. 55):

> "It seems to us that the above language of the court is conclusive in this case."

While the holding of this Court in the *Waddill* case, *supra*, has application to the facts of the said companion case, it has no application to the facts in the case at bar. The facts and holding of this Court in the said *Waddill* case, *supra*, have been sufficiently discussed in the preceding section (*ante*, pages 37-39) and will not be further discussed here, except to say that under the tests there laid down the lien of the State of Illinois in the instant case was so specific and so far perfected as effectively to exclude this property (and therefore the funds derived from the receiver's sale of such property) from the estate of the debtor, and thereby to defeat the Federal government's right of access to such funds under Section 3466.

In view of the foregoing obvious errors of the Supreme Court of Illinois, we submit that this Honorable Court

should reverse the decision of the Illinois Court. This it has the power to do. As this Court, in the *Waddill* case, *supra*, at page 356, said:

> "But it is a matter of federal law as to whether a lien created by state statute is sufficiently specific and perfected as to raise questions as to the applicability of the priority given the claims of the United States by an act of Congress."

IV.

THE CLAIM OF THE STATE OF ILLINOIS FOR UNEMPLOYMENT COMPENSATION CONTRIBUTIONS WAS A SECURED CLAIM AND CONSEQUENTLY WAS ENTITLED TO PRIORITY OVER THE UNSECURED CLAIM OF THE UNITED STATES FOR SOCIAL SECURITY EXCISE TAXES.

The foregoing arguments demonstrate that the United States is not entitled to priority under the provisions of Section 3466 of the Revised Statutes. It is a well established rule that the priority of the United States, if any there be, must rest upon a specific statutory provision, and does not obtain merely by virtue of its sovereign prerogatives. *Price* v. *United States*, 269 U. S. 492, 499; *Mellon* v. *Michigan Trust Co.*, 271 U. S. 236, 239, *United States* v. *Oklahoma*, 261 U. S. 253, 259.

In the case at bar, the State of Illinois, through its Director of Labor, had secured a lien under the provisions of Section 26 (a) of the Unemployment Compensation Act of Illinois (Ill. Rev. Stats., 1943, Ch. 48, Par. 243), which, in pertinent part, provides as follows:

> "A lien is hereby created in favor of the Director upon all the personal property or rights thereto owned or thereafter acquired by any employer and used by

him in connection with his trade, occupation, profession or business from whom contributions, interest or penalties are or may hereafter become due. Such lien shall be for a sum equal to the amount at any time due from such employer to the Director on account of contributions, interest and penalties thereon. Such lien shall attach to such property at the time such contributions, interest or penalties became, or shall hereafter become, due."

The debtor was an employer under this statute (R. 1) and the Director's claim against the debtor thereunder was fixed and determined in amount and was based on returns filed by the debtor wtih the Director (R. 3, 4, 9-12). Notices of such liens had been filed by the Director with the Recorder of Deeds as provided by Statute (R. 5). The debtor had been deprived of the possession of the property upon which these liens had attached (R. 6, 7). Since such property was in the hands of the Bailiff, it was both fixed and constant (R. 6, 7). All of these steps had been completed *prior* to any allegations of insolvency (R. 1-9).

Under this statute, the Director's claim was secured by a lien which had attached to all of the personal property used by the debtor in connection with its business. The debtor was a corporation and could only own such personal property as was appropriate to the transaction of its business. Ch. 32, Sec. 157.5 (d), Ill. Rev. Stat., 1943; *Bixler* v. *Summerfield*, 195 Ill. 147, 153; *People* v. *Chicago Gas Trust Company*, 130 Ill. 268, 287. In the absence of any evidence to the contrary it is, of course, to be presumed that the personal property of the debtor which had been seized by the Bailiff and by him turned over to the receiver was property which the debtor had used in connection with its business and was therefore subject to the State's lien for unemployment contributions. The rule is well settled that

a trustee or receiver takes such property subject to the lien of the petitioner, *Hooven* v. *Burdette*, 153 Ill. 672, 679.

It is therefore submitted that the claim of the State of Illinois for unemployment contributions was secured by a lien upon the personal property which the receiver received from the Bailiff and that this lien attaches to the funds derived by the receiver from the sale of such property.

In the case at bar the United States does not contend, nor is there evidence in the record to indicate that its claims were secured by a lien. Section 3466 does not, in itself, create any lien. *United States* v. *Texas*, 261 U. S. 253, 259.

In *Rivard* v. *Bijou Furniture Company*, 67 R. I. 251, 21 Atl. (2d) 563, 68 R. I. 385, 27 Atl. (2d), the Supreme Court of Rhode Island held that the claims of the state for unemployment compensation contributions and the claim of the United States for federal insurance contributions and capital stock taxes were entitled to parity. However, the court there specifically noted in its opinion that no liens were involved (67 R. I. 253, 21 Atl. (2d) 565). In that respect that case is distinguishable from the case at bar and is therefore not applicable to the issue here presented.

In view of the above, it is submitted that the claim of the State of Illinois for unemployment compensation contributions was a secured claim and consequently was entitled to priority over the unsecured claim of the United States for Social Security excise taxes.

CONCLUSION.

In view of the foregoing, it is respectfully submitted (1) that Section 3466 of the Revised Statutes is not applicable to give a claim of the United States for Social Security excise taxes a priority over a claim of the State of Illinois for unemployment compensation contributions exacted under an Illinois statute adopted in accordance with the congressional policy evinced in the Social Security Act and related legislation; (2) that the debtor was not insolvent within the meaning of Section 3466 of the Revised Statutes; (3) that the State's lien was so specific and so far perfected as effectively to exclude the funds in question from the estate of the debtor and thereby to defeat the Federal government's right of access to such funds under Section 3466; and (4) that the claim of the State of Illinois for unemployment compensation contributions was a secured claim and was consequently entitled to priority over the unsecured claim of the United States for Social Security excise taxes.

Petitioner therefore prays that the said final judgment, opinion and decision of the Supreme Court of Illinois be reversed, with such further orders as may be deemed appropriate.

Respectfully submitted,

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APPENDIX.

Section 3466 of the Revised Statutes of the United States.

(31 U. S. C. A. 191.)

Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed.

THE SOCIAL SECURITY ACT.

Ch. 531, 49 Stat. 620.

* * * * * * *

Title III—Grants to States for Unemployment Compensation Administration.

Appropriation.

Section 301. For the purpose of assisting the States in the administration of their unemployment compensation laws, there is hereby authorized to be appropriated, for the fiscal year ending June 30, 1936, the sum of $4,000,000, and for each fiscal year thereafter the sum of $49,000,000, to be used as hereinafter provided.

Payments to States.

Sec. 302(a). The Board shall from time to time certify to the Secretary of the Treasury for payment to each State which has an unemployment compensation law approved by the Board under Title IX, such amounts as the Board determines to be necessary for the proper administration of such law during the fiscal year in which such payment is to be made. The Board's determination shall be based on (1) the population of the State; (2) an estimate of the number of persons covered by the State law and of the cost of proper administration of such law; and (3) such other factors as the Board finds relevant. The Board shall not certify for payment under this section in any fiscal year a total amount in excess of the amount appropriated therefor for such fiscal year.

(b) Out of the sums appropriated therefor, the Secretary of the Treasury shall, upon receiving a certification under subsection (a), pay through the Division of Disbursement of the Treasury Department and prior to audit or settlement by the General Accounting Office, to the State agency charged with the administration of such law the amount so certified.

Provisions of State Laws.

Sec. 303 (a). The Board shall make no certification for payment to any State unless it finds that the law of such State, approved by the Board under Title IX, includes provisions for—

(1) Such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are found by the Board to be reasonably

calculated to insure full payment of unemployment compensation when due; and

(2) Payment of unemployment compensation solely through public employment offices in the State or such other agencies as the Board may approve; and

(3) Opportunity for a fair hearing, before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied; and

(4) The payment of all money received in the unemployment fund of such State, immediately upon such receipt, to the Secretary of the Treasury to the credit of the Unemployment Trust Fund established by section 904; and

(5) Expenditure of all money requisitioned by the State agency from the Unemployment Trust fund, in the payment of unemployment compensation, exclusive of expenses of administration; and

(6) The making of such reports, in such form and containing such information, as the Board may from time to time require, and compliance with such provisions as the Board may from time to time find necessary to assure the correctness and verification of such reports; and

(7) Making available upon request to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation and employment status of each recipient of unemployment compensation, and a statement of such recipient's rights to further compensation under such law.

(b) Whenever the Board, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that in the administration of the law there is—

(1) a denial, in a substantial number of cases, of unemployment compensation to individuals entitled thereto under such law; or

(2) a failure to comply substantially with any provision specified in subsection (a);

the Board shall notify such State agency that further payments will not be made to the State until the Board is satisfied that there is no longer any such denial or failure to comply. Until it is so satisfied it shall make no further certification to the Secretary of the Treasury with respect to such State.

* * * * * *

TITLE VII—SOCIAL SECURITY BOARD.

Establishment.

Section 701. There is hereby established a Social Security Board (in this Act referred to as the "Board") to be composed of three members to be appointed by the President, by and with the advice and consent of the Senate. During his term of membership on the Board, no member shall engage in any other business, vocation, or employment. Not more than two of the members of the Board shall be members of the same political party. Each member shall receive a salary at the rate of $10,000 a year and shall hold office for a term of six years, except that (1) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his pedecessor was appointed, shall be appointed for the remainder of such term; and (2) the terms of office of the members first taking office after the date of the enactment of this Act shall expire, as designated by the President at the time of appointment, one at the end of two years, one at the end of

four years, and one at the end of six years, after the date of the enactment of this Act. The President shall designate one of the members as the chairman of the Board.

Duties of Social Security Board.

Sec. 702. The Board shall perform the duties imposed upon it by this Act and shall also have the duty of studying and making recommendations as to the most effective methods of providing economic security through social insurance and as to legislation and matters of administrative policy concerning old-age pensions, unemployment compensation, accident compensation, and related subjects.

Expenses of the Board.

Section 703. The Board is authorized to appoint and fix the compensation of such officers and employees, and to make such expenditures, as may be necessary for carrying out its functions under this Act. Appointments of attorneys and experts may be made without regard to the civil-service laws.

Reports.

Sec. 704. The Board shall make a full report to Congress, at the beginning of each regular session, of the administration of the functions with which it is charged.

* * * * * * *

TITLE IX—TAX ON EMPLOYERS OF EIGHT OR MORE.

Imposition of Tax.

Section 901. On and after January 1, 1936, every employer (as defined in section 907) shall pay for each calendar year an excise tax, with respect to having individuals in his employ, equal to the following percentages of the total wages (as defined in section 907) payable by him (regardless of the time of payment) with respect to employment (as defined in section 907) during such calendar year:

(1) With respect to employment during the calendar year 1936 the rate shall be 1 per centum;

(2) With respect to employment during the calendar year 1937 the rate shall be 2 per centum;

(3) With respect to employment after December 31, 1937, the rate shall be 3 per centum.

Credit Against Tax.

Sec. 902. The taxpayer may credit against the tax imposed by section 901 the amount of contributions, with respect to employment during the taxable year, paid by him (before the date of filing his return for the taxable year) into an unemployment fund under a State law. The total credit allowed to a taxpayer under this section for all contributions paid into unemployment funds with respect to employment during such taxable year shall not exceed 90 per centum of the tax against which it is credited, and credit shall be allowed only for contributions made under the laws of States certified for the taxable year as provided in section 903.

Certification of State Laws.

Sec. 903. (a) The Social Security Board shall approve any State law submitted to it, within thirty days of such submission, which it finds provides that—

(1) All compensation is to be paid through public employment offices in the State or such other agencies as the Board may approve;

(2) No compensation shall be payable with respect to any day of unemployment occurring within two years after the first day of the first period with respect to which contributions are required;

(3) All money received in the unemployment fund shall immediately upon such receipt be paid over to the Secretary of the Treasury to the credit of the Unemployment Trust Fund established by section 904;

(4) All money withdrawn from the Unemployment Trust Fund by the State agency shall be used solely in the payment of compensation, exclusive of expenses of administration;

(5) Compensation shall not be denied in such State to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (A) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; (B) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (C) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organizations;

(6) All the rights, privileges, or immunities conferred by such law or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal such law at any time. The Board shall, upon approving such law, notify the Governor of the State of its approval.

(b) On December 31 in each taxable year the Board shall certify to the Secretary of the Treasury each State whose law it has previously approved, except that it shall not certify any State which, after reasonable notice and opportunity for hearing to the State agency, the Board finds has changed its law so that it no longer contains the provisions specified in subsection (a) or has with respect to such taxable year failed to comply substantially with any such provisions.

(c) If, at any time during the taxable year, the Board has reason to believe that a State whose law it has previously approved, may not be certified under subsection (b), it shall promptly so notify the Governor of such State.

Unemployment Trust Fund.

Sec. 904. (a) There is hereby established in the Treasury of the United States a trust fund to be known as the "Unemployment Trust Fund," hereinafter in this title called the "Fund." The Secretary of the Treasury is authorized and directed to receive and hold in the Fund all moneys deposited therein by a State agency from a State unemployment fund. Such deposit may be made directly with the Secretary of the Treasury or with any Federal reserve bank or member bank of the Federal Reserve System designated by him for such purpose.

(b) It shall be the duty of the Secretary of the Treasury to invest such portion of the Fund as is not, in his judg-

ment, required to meet current withdrawals. Such investments may be made only in interest bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at par, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under the Second Liberty Bond Act, as amended, are hereby extended to authorize the issuance at par of special obligations exclusively to the Fund. Such special obligations shall bear interest at a rate equal to the average rate of interest, computed as of the end of the calendar month next preceding the date of such issue, borne by all interest-bearing obligations of the United States then forming part of the public debt; except that where such average rate is not a multiple of one-eighth of 1 per centum, the rate of interest of such special obligations shall be the multiple of one-eighth of 1 per centum next lower than such average rate. Obligations other that such special obligations may be acquired for the Fund only on such terms as to provide an investment yield not less than the yield which would be required in the case of special obligations if issued to the Fund upon the date of such acquisition.

(c) Any obligations acquired by the Fund (except special obligations issued exclusively to the Fund) may be sold at the market price, and such special obligations may be redeemed at par plus accrued interest.

(d) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.

(e) The Fund shall be invested as a single fund, but the Secretary of the Treasury shall maintain a separate book

account for each State agency and shall credit quarterly on March 31, June 30, September 30, and December 31, of each year, to each account, on the basis of the average daily balance of such account, a proportionate part of the earnings of the Fund for the quarter ending on such date.

(f) The Secretary of the Treasury is authorized and directed to pay out of the Fund to any State agency such amount as it may duly requisition, not exceeding the amount standing to the account of such State agency at the time of such payment.

* * * * * * *

Interstate Commerce.

Sec. 906. No person required under a State law to make payments to an unemployment fund shall be relieved from compliance therewith on the ground that he is engaged in interstate commerce, or that the State law does not distinguish between employees engaged in interstate commerce and those engaged in intrastate commerce.

Definitions.

Sec. 907. When used in this title—

(a) The term "employer" does not include any person unless on each of some twenty days during the taxable year, each day being in a different calendar week, the total number of individuals who were in his employ for some portion of the day (whether or not at the same moment of time) was eight or more.

(b) The term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash.

(c) The term "employment" means any service, of whatever nature, performed within the United States by an employee for his employer, except—

(1) Agricultural labor;

(2) Domestic service in a private home;

(3) Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(4) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;

(5) Service performed in the employ of the United States Government or of an instrumentality of the United States;

(6) Service performed in the employ of a State, a political subdivision thereof, or an instrumentality of one or more States or political subdivisions;

(7) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(d) The term "State agency" means any State officer, board, or other authority, designated under a State law to administer the unemployment fund in such State.

(e) The term "unemployment fund" means a special fund, established under a State law and administered by a State agency, for the payment of compensation.

(f) The term "contributions" means payments required by a State law to be made by an employer into an unemployment fund, to the extent that such payments are made by him without any part thereof being deducted or deductible from the wages of individuals in his employ.

(g) The term "compensation" means cash benefits payable to individuals with respect to their unemployment.

ILLINOIS UNEMPLOYMENT COMPENSATION ACT.

Ch. 48, Sec. 243, Ill. Rev. Stat., 1943

§26. LIEN CREATED UPON ASSETS OF EMPLOYER—COMMENCEMENT—LIMITATION.) (a) A lien is hereby created in favor of the Director upon all the personal property or rights thereto owned or thereafter acquired by any employer and used by him in connection with his trade, occupation, profession or business, from whom contributions, interest or penalties are or may hereafter become due. Such lien shall be for a sum equal to the amount at any time due from such employer to the Director on account of contributions, interest and penalties thereon. Such lien shall attach to such property at the time such contributions, interest or penalties became, or shall hereafter become, due. In all cases where a report setting forth the amount of such contributions has been filed with the Director, no action to enforce such lien shall be brought after three years from the date of the filing of such report and in all other cases no action to enforce such lien shall be brought after three years from the date that the determination and assessment of the Director made pursuant to the provisions of this Act become final.

INNOCENT PURCHASER — RECORDATION — WITHDRAWAL OF NOTICE.

(b) (1) Such lien shall be invalid only as to any innocent purchaser for value of stock in trade of any employer in the usual course of such employer's business, and shall be invalid as to any innocent purchaser for value of any of the other assets to which such lien has attached, unless notice thereof has been filed by the Director in the office of the Recorder of Deeds of the county within which the property subject to the lien is situated. The Director may, in his discretion, for good cause shown, issue a certificate of withdrawal of notice of lien filed against any employer, which certificate shall be recorded in the same manner as herein provided for the recording of notice of liens. Such withdrawal of notice of lien shall invalidate such lien as against any person acquiring any of such employers' property or any interest therein, subsequent to the recordation of the withdrawal of notice of lien, but shall not otherwise affect the validity of such lien, nor shall it prevent the Director from re-recording notice of such lien. In the event notice of such lien is re-recorded, such notice shall be effective as against third persons only as of the date of such re-recordation.

FILING OF NOTICE—LIEN INDEX

(2) The Recorder of Deeds of each county shall procure at the expense of the county a file labeled "Unemployment Compensation Contribution Lien Notices" and an index book labeled "Unemployment Compensation Contribution Lien Index." When a notice of any such lien is presented to him for filing, he shall file it in numerical order in the file and shall enter it alphabetically in the index. The entry

shall show the name, and last known business address of the employer named in the notice, the serial number of the notice, the date and hour of filing, and the amount of contribution, interest and penalty thereon due and unpaid. When a certificate of complete or partial release of such lien issued by the Director is presented for filing in the office of the Recorder of Deeds where a notice of lien was filed, the Recorder shall permanently attach the certificate of release to the notice of lien and shall enter the certificate of release and the date in the Unemployment Compensation Contribution Lien Index on the line where the notice of lien is entered.

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PRIORITY OF LIEN.

(d) The lien herein created in favor of the Director shall be prior to all other liens whether general or specific, and shall be inferior only to any claim for wages filed pursuant to "An Act to protect employees and laborers in their claims for wages" approved June 15, 1887, as amended, in an amount not exceeding $250.00 for work performed within six months from the date of filing such claim, and to such liens as shall attach prior to the filing of Notice of Lien by the Director with the Recorder of Deeds as provided in this Act; provided, however, that in all cases where statutory provision is made for the recordation or other public notice of a lien, the lien of the Director shall be inferior only to such liens as shall have been duly recorded, or of which public notice shall have been duly given, in the manner provided by such statute, prior to the filing of notice of lien by the Director with the Recorder of Deeds as in this Act provided.

FORECLOSURE OF LIEN.

(e) In addition and as an alternative to any other remedy provided by this Act, or by the laws of the State of Illinois, the Director may enforce the lien herein created by petition in the name of the People of the State of Illinois to the Circuit Court of the county wherein the property subject to the lien is situated, praying that the lien which has attached to said property, be foreclosed and the aforesaid property be sold in the same manner as in cases of foreclosure of mortgages upon personal property in courts of record. In all such cases, it shall not be necessary that said petition described the property to which said lien has attached and it shall be the duty of the employer against whom such petition has been filed to file in said proceedings, a full and complete schedule, under oath, of all personal property and rights thereto which he owned at the time the contributions, upon which the lien sought to be foreclosed is based, became due, or which he subsequently acquired, indicating upon such schedule the property so owned by such employer which was, or is used by such employer in connection with his trade, occupation, profession or business, and if such employer shall so fail to do after having been so ordered by the court, he may be punished as in other cases of contempt of court.

The court in which such proceedings shall be pending may issue such process, make such orders requiring the parties to appear and require such notice to be given as is, or may be made, in other civil actions and shall have the same power and jurisdiction of the parties in such matter, and the rules of practice shall be the same as in other civil cases except as is otherwise provided by this Act.

Upon sale of the aforesaid personal property, the proceeds shall be applied to the payment of the costs incurred in the proceeding; the satisfaction of such liens as have attached to said property in the order of their priority and the balance, if any, to such parties as the court shall find to be entitled thereto. The Director is hereby empowered to bid at any sale conducted pursuant to the provisions of this Act.